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THE BAWD AND THE BARD: MERCY TEMPERS STRICT STATUTORY APPLICATION IN SHAKESPEARE'S MEASURE FOR MEASURE

C.M.A. MC CAULIFF*

INTRODUCTION

In *Measure for Measure*, Shakespeare considered a social problem—the situation in a fictional Viennese society where the muddled marriage laws resulted in the refusal of people to marry according to the suggested but not required formalities. Marriage without witnesses and officiating clergy rendered marriage irregular though not invalid. A couple's consent had long been the only criterion for a valid marriage. Shakespeare introduced into this situation a statute that criminalized premarital sex by imposing a penalty of death. The statute, in disuse at the outset of the play but revived by the ruling Duke's new deputy, ratcheted up the consequences for the characters in the play, and for society in general, since its proscriptions affected marriages previously considered irregular, but not invalid.

The central event in the play was Judge Angelo's extortion of sex from Isabella, a supplicant who went before him to plead for the life of her brother Claudio, who was trapped in the broad

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net of the newly revived statute. The fact that the judge, who zealously enforced the anti-fornication statute, violated the statute called into question the wisdom of the severity of the statute in demanding death as a penalty in every case. Moreover, Judge Angelo's inability to comply with the statute revealed Shakespeare's attitude toward overly severe government.

Shakespeare demonstrated that such tyranny, although embraced by well-meaning people, proved simply unworkable and should, therefore, be soundly rejected by a wise ruler. The dangers to society present on both extremes of government, permissiveness (or benign neglect) versus intrusiveness into what we deem the private sphere, became readily apparent during the course of the play. Both Shakespeare's contemporary audience and the characters in the play perceived the disadvantages of lax government. The disadvantages of overly severe government were much more difficult for Shakespeare to explain in the context of Elizabethan England because the Puritans had not yet enacted a severe anti-fornication law. By the end of the play, it was obvious that the strictness of human justice must be tempered by the divine quality of mercy and reflected in the law.

Measure for Measure allows participation in Shakespeare's exploration of the legal and moral questions surrounding the ill-conceived criminalization of premarital sex. Shakespeare's solution to the criminal statute against fornication was a series of forced marriages. This article will examine the relationship of the statute to social morality in Shakespeare's Vienna, focusing particularly on the theme of strict legality balanced by mercy and equity. The stories of each couple illuminates the legal consequences that result from the operation of the statute and allows us to look inferentially at the hypocrisies in our ways of dealing with property, marriage, and premarital sex.¹ The lack

¹ James A. Brundage, *MEDIEVAL CANON LAW* 165 (1993), noted that a general abstract statement of law is on the surface easily understandable but that its meaning only becomes apparent through application which "often reveals troublesome gaps and bulges [Therefore] law teachers have for centuries employed hypothetical questions, based on notional situations, as tools for legal analysis and instruction." See Paul H. Robinson, *Some Doubts about Argument by Hypothetical*, 88 CAL. L. REV. 813, 825 (2000) (concluding that "[i]f one wishes to support a deontological conclusion, testing a reader's intuitions on a hypothetical cannot be used as evidence to prove the point").

of enforcement that existed in Shakespeare's Vienna in the years prior to the play's opening should not be considered an exhibition of mercy. Instead, through the equity of the law, mercy included what each person had done and enjoins improvement after accountability.

I. COUPLES CALLING INTO QUESTION THE APPLICATION OF THE STATUTE

Shakespeare's characters in *Measure for Measure* played their parts in a series of situations brilliantly interwoven to demonstrate the injustice of a strictly applied, overbroad criminal statute. The difficulties in applying a capital punishment scheme for fornication appeared through a series of couples who, though guilty of fornication under the statute, presented mitigating circumstances. Shakespeare's exploration ranged from bawds (procurers) and their clients² to a judge's extortion (sexual blackmail) of a supplicant,³ and siblings' demands upon each other for help and understanding of their different values.⁴ Also included were lovers' personal and property premarital demands⁵ and, finally, an offer of marriage that suggested undue influence and at the same time threatened a novice's commitments to her Christian community and to God.⁶ Norms in the play depended on particular relationships, specific circumstances and individual status, including some reference to both secular and divine love, which necessarily was less explicitly developed in the play than relationships between men

² See *infra* notes 13–14 and accompanying text (discussing prostitutes and their clients).

³ See *infra* note 50 and accompanying text (noting Judge Angelo's blackmail of Isabella in *MEASURE FOR MEASURE*).

⁴ See *infra* note 53 and accompanying text (noting how Isabella would go to great lengths to save her brother).

⁵ Claudio was indicted for fornication, a capital offense, although he was betrothed to Juliet and they were expecting a child. Claudio postponed the marriage until the marriage portion could be worked out and he could fulfill his premarital obligations. Meanwhile, Angelo ended his contract with Mariana upon the destruction of the fidelity portion, arguably a condition of the marriage. See *infra* notes 48–49 and accompanying text.

⁶ Duke Vincentio offered marriage to Isabella under the questionable circumstances of (1) having just saved her brother's life, thus pressuring her to accept his marriage proposal when she may feel only gratitude but not love and (2) her status as a postulant in a convent in which those who later profess their permanent vows also live a cloistered life. See *infra* pp. 52–54.

and women. These scenarios formed the action of the play and constituted the dynamics of obligations and right behavior between the sexes.

The main action of the play revolved around the reactivation of an old anti-fornication statute, which had fallen into desuetude. Shakespeare leads us to question the nature of acceptable sexual behavior and what society should do about inappropriate relationships. The statute's purpose was to enforce premarital chastity, a notion dear to all reformers, both Puritan and Catholic.⁷ Each of the couples illuminated, in a different way, the offense prohibited in the statute and led us to ask whether the statute ought to be enforced strictly against every offender by the universal application of the death penalty. The relationships between each couple also illustrated the role and necessity of equity in the application of human laws.

The play began with simple relationships and universal characters frequenting the public and bawdy houses. It progressed from the early scenes of bawds and clients before the proclamation of the anti-fornication statute's enforcement to the enforcement of the statute in much more complicated cases as major characters were introduced. Even very simple relations between the sexes threw the participants into moral, ethical and legal difficulties. Over the course of the play, Shakespeare presented several personal relationships between men and women, varying in nature and circumstance, from noblemen and women to bawds and pimps, from patronizing prostitutes to pre-nuptial promises, from sisterly loyalty to extortion. In the end, Shakespeare came down on the side of mercy and equity over draconian enforcement of the statute. This article will bring out the differences and similarities among the couples in order to

⁷ See generally James A. Brundage, *LAW, SEX, AND CHRISTIAN SOCIETY IN MEDIEVAL EUROPE* 551-75 (1987), treating the position of reformers, both Puritan and Catholic. Thus, "Some of Calvin's Puritan followers . . . saw adultery and prostitution as both physical and spiritual offenses that merited stern retribution, physical and spiritual, in this life as well as hereafter." *Id.* at 557. In 1563, Catholic marriage reform added to the medieval requirement of consent of the parties:

[T]he further critical requirement that in order to be valid the exchange of consent must take place in the presence of witnesses and that these witnesses must include the pastor of the parish where the parties made their promises. . . . [T]he effect of the canon [reforming marriage] was to restore to parents greater legal control over the marriages of their offspring than they had enjoyed for many centuries in Catholic Europe.

Id. at 564.

illuminate Shakespeare's view of proper government through the avoidance of too strict or too lax an enforcement of the laws.

Thus, Shakespeare's *Measure for Measure* can be read as an exploration of the viability, sensibility, and limits of a proposed puritanical law criminalizing premarital sex in all circumstances, even when betrothal affirmed the commitment of the parties. The various parties were affected differently by the application of the statute: the defendant, the victim, society as a whole and even the government members who administered the law. We are invited to consider the implications of the statute, such as punishment, remedy, and policy. The playwright examined both the nature of the proof required to condemn a man under the statute and the consequences of executing a man for fornication on the society. The reach and effects of the statute casts doubt on the wisdom of the society that enacted it, and the role equity played in balancing the society.

The statute affected several couples in varied circumstances, which reveals ambiguities about marriage and the role of sex in the society. From a public law point of view, the same situations also elucidate different styles of government, including the requirements of a judiciary and how to make the system both equitable and ethical. The very point of the varied circumstances of each couple was that one statute could not be rigidly applied to all.⁸ Equity must be a part of the judicial dynamic, however, Judge Angelo, was rigid, precise, and a stickler for Puritan stringency.⁹

⁸ The Puritans wanted the death penalty for adultery because they found equally offensive any and all deviation from what they deemed godly behavior, without characterizing the offense according to different levels of seriousness. The Puritan position was thus represented in the play by an old statute newly enforced. In Shakespeare's lifetime, the puritans tried repeatedly to get such a statute passed but this did not in fact occur in England until much later (1650). See Keith Thomas, *The Puritans and Adultery: The Act of 1650 Reconsidered*, in *PURITANS AND REVOLUTIONARIES: ESSAYS IN SEVENTEENTH-CENTURY HISTORY PRESENTED TO CHRISTOPHER HILL* 257, 257-60 (Donald Pennington & Keith Thomas eds., 1978). For a discussion on theological disputes of the 1590s, see generally PETER LAKE, *MODERATE PURITANS AND THE ELIZABETHAN CHURCH* 201-42 (1982). Many other sex satires in the 1590s were anti-puritan. See, e.g., WILLIAM HOLDEN, *ANTI-PURITAN SATIRE 1572-1642*, at 113-16 (1968). See generally *THE REFORMATION IN NATIONAL CONTEXT* 90 (Bob Scribner et al. eds., 1994) (discussing the outgrowth of Puritanism from Calvinism).

⁹ See Donald J. McGinn, *The Precise Angelo*, in *JOSEPH QUINCY ADAMS MEMORIAL STUDIES* 129, 129-39 (1948). Angelo's name was perhaps a play on angel, and angle (indicating that he was twisted and not straight). This punning

The Viennese statute in *Measure for Measure*, which carried the death penalty for a man who committed fornication (including premarital sexual relations when a promise of marriage exists), emphasized the contractual nature of marriage in a Puritan society. In 1604, the House of Commons passed a bill, which failed to become law, requiring stricter standards for sexual behavior.¹⁰ As the play illustrates, one of the problems with the Viennese statute and the proposals in Parliament was that the strict standard of sexual behavior that the law envisioned did not comport with human nature. Positive law thus conflicts with natural law giving rise to hypocrisy and difficulty in achieving even-handed enforcement.¹¹

A. *Lucio and Kate Keepdown: Lust and Sex for Money*

One such relationship subjected to penalty under the Viennese statute was that between Kate Keepdown, an alleged prostitute, and Lucio, a gentleman who admitted impregnated her. This relationship differed from the others in *Measure for Measure* because of its ambiguity and brief mention.¹² Kate

was long done in Latin. See generally Saint Bede, *THE ECCLESIASTICAL HISTORY OF THE ENGLISH PEOPLE* 127 (Judith McClure & Roger Collins eds. 1994).

¹⁰ See Thomas, *supra* note 8, at 272–75 (detailing the history of laws and proposed laws relating to sexual behavior during this time period).

¹¹ See R. S. WHITE, *NATURAL LAW IN ENGLISH RENAISSANCE LITERATURE* 173–76 (1996) (discussing natural law and its role in Shakespeare's *MEASURE FOR MEASURE*, and during the time period in which it was written).

¹² "Keep down" means "to hold in subjection . . . to keep in control . . . to prevent from growing, advancing or succeeding." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1236 (Philip Babcock Gove ed., 1993). However, the bawd was named Mistress Overdone. Similarly, Elbow, the arresting officer, whom Pompey accused of doing the same thing for which they condemned Claudio (elite class), so that lower classes were also affected by the Puritan position on sex. Elbow was "respected" (i.e., suspected) of having had sex with his wife before he married her. In addition, lower classes were affected because they ran the brothels, which, of course, had elite clientele. Peter Lake said that recent social and cultural research on the location and impact of Puritanism bore out the play's presentation. See Peter Lake, *Address for The Campaign Against the Stage and the Development of the Public Sphere in Elizabethan London at CCNY* (Apr. 22, 1999).

Lucio engaged in displacement. He was quick to slander the Duke's reputation by spreading falsehoods about the Duke's sexual exploits: "your beggar of fifty: and his use was, to put a ducat in her clack-dish. The Duke had crotchets in him. He would be drunk too . . ." WILLIAM SHAKESPEARE, *MEASURE FOR MEASURE* act 3, sc. 2, ll. 110–12 (Brian Gibbons ed., 1991) [hereinafter *MEASURE FOR MEASURE*]. The truth is that Lucio engaged in immoral behavior. Perhaps his shame drove him to project his shortcomings on to the Duke, a character that was honored, respected

Keepdown never appeared on stage during the play and her only presence was as the victim of Lucio's misbehavior. The play did not make clear whether Lucio had a long-standing relationship with Kate Keepdown or if their relationship was merely a one-time customer and service-provider. It was equally unclear whether Kate was in fact a prostitute since Lucio was certain he fathered her child.¹³ If she were indeed a prostitute, her line of work would have greatly impeded paternal identification. This ambiguity suggests a possible gray area, more complicated than Shakespeare elaborated in the play, and probably beyond the scope of the law's remedy. Nevertheless, the ducal solution of marriage after fornication rather than the death penalty seemed to ask the audience to agree, over the characters' protests, that marriage is preferable to death, whatever the drawbacks.

Shakespeare conveniently set *Measure for Measure* outside England, thereby avoiding censorship. Lucio and Kate Keepdown's relationship differed from the others in that while it does involve an alleged contract of money for sex, according to Lucio, it was not one sanctioned by law since it was not a promise of marriage. In some ways, both the pre-nuptial contract and the service of a prostitute involved an exchange of sex for money, given the presence of a dowry equating a woman with a commodity.¹⁴ In the former case, however, the land or

and revered in Vienna. By fabricating stories about the Duke, Lucio unconsciously made the statement that even the greatest individuals have their weaknesses. Perhaps he wished that the Duke actually did engage in illicit activities because it would reconcile Lucio's own secret shame. If someone so venerated could fall from grace then Lucio a common man was guilty of the same moral crime. For a psychoanalytic study of *Measure for Measure*, see Stephen A. Reid, *A Psychoanalytic Reading of Troilus and Cressida and Measure for Measure*, 57 *PSYCHOANALYTIC REV.* 263 (1970).

¹³ "[T]he long-lived myth [was] that prostitutes bear very few children." LISA HOPKINS, *THE SHAKESPEAREAN MARRIAGE* 78 (1998). See generally M. LINDSAY KAPLAN, *THE CULTURE OF SLANDER IN EARLY MODERN ENGLAND* 92-108 (Cambridge Univ. Press 1997) (dealing with slander in *Measure for Measure*).

¹⁴ It was not a new observation: around 1120, Eloise observed:

A woman who prefers a rich to a poor husband, or who yearns for his goods rather than himself, may not reckon herself other than corrupt [*venalem*]. . . . For crime consists, not in the outcome of the deed, but in the mind and attitude of the doer; and justice weighs, not what is done, but the spirit in which it is done.

CHRISTOPHER N. L. BROOKE, *THE MEDIEVAL IDEA OF MARRIAGE* 112 (3d prtg. 1994). Since the law is class-based, it would ruin Pompey (who is dependent on his job in the brothel), but not Lucio or Froth who are gentlemen. Pompey illustrated the idea that sex is only bad if money gets entangled with it, illustrated in the play when sex

money was given to the husband in marriage to increase the chances that the children of that marriage would be economically provided for. In the latter case, the money was given to the woman as a method of payment for her illicit services to the man. Both situations involved payment, fornication, and an agreement that would be subject to the same statute—no sexual relations before marriage on penalty of death. Although the precontract prevented marriage to another, it became less compelling as the Puritans became more dominant, and as sexual relations following a precontract were deemed fornication.

The enrichment, however, differed since the pre-nuptial contract assured an increase in wealth for the man (the receipt of a wife presumably accompanied by property and the ability to bear heirs), but the solicitation of sex provided only a moment of pleasure for the man and a few coins for the woman. The husband, therefore, was enriched to the greatest extent possible by marrying he receives a wife, the possibility of heirs, money, and guaranteed sex. Pecuniary recompense for a woman was, however, condemned when a man received relatively less (solely sexual pleasure). Ironically, for all its puritanical intent, the Viennese statute acted not as guardian of its subjects' morality by confining sex to the realm of marriage, but rather as a financial advisor seeking to get the most value for sexual relations.

Shakespeare was careful to reveal any unintended consequence of the statute that may have vexed those subjected to it. Furthermore, the manner in which a government administered a law was as important as the content of the law or the evil it sought to control. The purpose of this law, presumably, was to enforce God's law banning sexual relations before marriage in accordance with the principles of the Puritan party. Shakespeare showed that an attempt to curb human nature with the threat of death results in haphazard and inconsistent enforcement. The Duke presented the solution of enforcing marriages after fornication took place, familiar to both Shakespeare's audience and in our own time.

is commercialized or when greed and sex came together. The key switch between sex and the dowry is arguably greed, which bedeviled both Claudio and Angelo. Lucio said Angelo depopulates the city and Pompey sees the city as full of bastards. To Lucio marriage to a whore was worse than being whipped.

In addition to applying the statute to varying instances of fornication, the Duke had to subject members of all classes to the same statute, resulting in a range of consequences. Lucio would have rather died than marry a prostitute. He admitted to the disguised Duke that he “was fain to forswear it [his certain paternity of Kate’s child]; they would else have married [him] to the rotten medlar.”¹⁵ To Lucio, as he presented himself to the friar/Duke, patronizing Kate Keepdown for his pleasure was acceptable, but marriage to her offended his place in society. Sex with the lower classes, to a gentleman, was separate and distinct from the purpose of marriage.

Lucio, sentenced to death and quickly pardoned, despite his slander of the Duke, begged the Duke not to marry him to a whore, pleading “do not recompense me in making me a cuckold.”¹⁶ Lucio’s concerns focused on his reputation because the notion of cuckoldry prioritized the husband’s pride in controlling his wife’s sexual conduct—if another man trespassed, that reflected poorly on the husband, perhaps indicating his failure to observe his masculine duty. Lucio avoided his duty to marry Kate Keepdown. Having a wife shared with others (her supposed other patrons or her past patrons) offended Lucio’s male sexual pride and would have tarnished his reputation. Here ambiguity was evidenced by Kate’s unclear status and her failure to appear on stage.

Whether Kate was in fact a prostitute in the play we were never directly told. It was in fact irrelevant since the ducal solution of marriage, as a sentence for fornication, seems to reduce the significance of the woman’s status balanced against strict sentencing guidelines for execution.¹⁷ With some risk to herself, Mistress Overdone went out of her way to appear as a witness against Lucio in a paternity suit before the Duke.¹⁸

¹⁵ MEASURE FOR MEASURE, *supra* note 12, act 4, sc. 3, ll. 160–61. See generally William W. Lawrence, *Measure for Measure and Lucio*, 9 SHAKESPEARE Q. 443, 443 (1958) (discussing how Lucio must marry the “rotten meddler” after joking about her improprieties).

¹⁶ MEASURE FOR MEASURE, *supra* note 12, act 5, sc. 1, l. 509.

¹⁷ See Victoria Hayne *Performing Social Practice: The Example of Measure for Measure*, 44 SHAKESPEARE Q. 1, 8 n.19 (1993) (suggesting that Lucio’s claim that Kate is a punk should not be taken at face value).

¹⁸ See RALPH HOLBROOKE, *CHURCH COURTS AND THE PEOPLE DURING THE ENGLISH REFORMATION 1520–1570*, at 76 (Clarendon Press 1979) (stating that sex out of wedlock was considered a crime under ecclesiastical law and accordingly “underground ‘maternity homes’ “ often took in pregnant girls to help the man

Furthermore, she did so without worrying about the loss of income she would have suffered if Kate had in fact been a popular draw in her bawdy house. Mistress Overdone plainly stated in Act III that Lucio informed the authorities about her bawdy house in retaliation for her testimony that Lucio fathered Kate's child. After Lucio lied his way out of marrying Kate the first time, Mistress Overdone assumed the responsibility of raising Kate's child. Had Kate been a successful prostitute, she arguably would have had enough money to take care of the child herself. In any event, the Duke placed the welfare of the child, almost 15 months old, above Lucio's social scruples about marrying Kate.

As the guards took Lucio away in Act V, he lamented to the Duke that "Marrying a punk . . . is pressing to death, whipping, and hanging!"¹⁹ Lucio stated that he preferred death over the condemnation of marriage to a woman he alleges is a prostitute. Therefore, the solution of marriage did little to remedy the problem presented in the relationship between Lucio, who had the social status of a disreputable gentleman, and Kate Keepdown, a woman whose reputation Lucio disparaged by alleging that she was a prostitute. The implications of the law, in this instance, involved class issues, which could not be erased by the Duke's desire to make marriage the great equalizer among all fornicators.

In asserting that the death penalty should not be imposed even on the sort of person the statute was surely designed to catch, Shakespeare cast Lucio as one who admittedly frequented

avoid the consequences of the birth of a child). To summarize the issues Lucio and Kate present: resort to the services of a prostitute counted as fornication, thereby subjecting the male customer to the death penalty under the anti-fornication statute. If the customer was a gentleman/nobleman his status made no difference in his punishment, according to the play. If the statute did not encompass the services of a prostitute, would a gentleman/nobleman allege that the woman in question is a prostitute in order to avoid punishment? With regard to the evidentiary issues of proving the nature of their relationship, assuming the prostitute willingly provided a sexual service for money, did this criminal anti-fornication statute implicate family law or contract law? Since the major way to discover fornication was the unmarried woman's pregnancy, what were the consequences of the statute for the child? Did the statute do a disservice to society by executing a child's father, especially if the father attempted to avoid child support? Was the punishment *ex post facto* if the statute was revived after Kate has her baby? How much discretion should the judge exercise to deal with the rigor of the statute?

¹⁹ MEASURE FOR MEASURE, *supra* note 12, act 5, sc. 1, ll. 513-14.

prostitutes and knew the owner of bawdy houses by name. For the purposes of the play, Kate's status should have remained ambiguous. Even if there were no redeeming circumstances in Lucio's behavior, Shakespeare suggested that the death penalty, which would punish a particular fornicator, must give way to the larger societal concerns of stability through marriage. The acceptable way to regularize sexual relations and provide for support and proper upbringing of the resulting children was marriage, not the death penalty. Here, Shakespeare showed the state's concern with social stability, as he later revealed the equitable concerns raised in Isabella's mercy speech to Judge Angelo and in her call for the Duke to have mercy on Angelo.

Additionally, if Kate Keepdown did indeed have as many patrons as Lucio accused her of having, the issue of proof would have been a difficult impasse in the application of the law. Lucio's above-mentioned self-incriminating statements to the friar/Duke, however, acted as a confession, which the Duke as chief magistrate of Vienna overheard through his disguise as friar. Thus, Lucio provided the necessary evidence for his delayed prosecution, not merely for child support, but under the much harsher statute against fornication. In this situation, Shakespeare suggested that if the law brought forth a customer-prostitute pair guilty of fornication, albeit without Lucio's comedic and unintended self-incrimination, the court would have a difficult time proving who the father of the child was and enforcing a law proscribing an age-old human temptation. Lucio's own character as an admitted liar perhaps raised further doubt about Lucio's allegation of prostitution against Kate Keepdown, possibly made in a second attempt to avoid marrying her, when his mere wrongful denial of paternity no longer protected him from the pressure to marry Kate. Lucio appeared certain of his paternity, a difficult feat if he shared her with other male customers.

One of Lucio's purposes in the play was to keep the audience informed in lively, amusing and frequently reliable discourse. His character also personified the great hypocrisy of the statute that Shakespeare painted as so problematic. In his guise as friar, the Duke was the beneficiary of many colored opinions from his "loyal subject" Lucio. Lucio mocked Angelo in a generally offensive, but accurate, description of the man and his character. In addition, Lucio offered specific insults, possibly

slandorous, about the Duke's reputation. Lucio called the Duke "[a] very superficial, ignorant, unweighing fellow" to his face and went on to label him a drunk and a womanizer.²⁰ The scurrilous nature of this exchange, in which Lucio told the friar that he did love the Duke while rattling on about the Duke's alleged indiscretions, symbolized the hypocrisy in having the death penalty in the fornication statute strictly applied.

The statutory purpose of those who would put fornicators to death was to protect a union that God was deemed to hold sacred, thereby necessitating the inference that man had profaned marriage by fornication. In fact, the statute itself profaned the sanctity of marriage in the same way as its administrator transgressed by his sexual extortion of Isabella. The death penalty profaned God's laws against murder. Lucio vainly attempted to please all around him, just as the statute vainly attempted to deter all fornication on penalty of death. Shakespeare demonstrated that the statute could not be reasonably enforced.

Shakespeare presented Lucio as a frequently sensible commentator who reasonably pointed out that "it is impossible to extirp it [lechery] quite . . . till eating and drinking be put down" as well.²¹ The logic and sense in Lucio's position was that the severity of the statute would do little to deter human behavior as widespread as gluttony and drunkenness. Lucio's insights are important in reflecting a very human (vice-inflicted) perspective, a perspective that all laws must take into account so that the law is not ignored on the one hand or tyrannical on the other.

B. Claudio and Juliet: Lack of Money Compromises the Purity of Love

The catalyst of the conflict in *Measure for Measure* appeared in a flash of Shakespeare's sophisticated irony: the first citizen subject to the excessive penalty of death in the Viennese anti-fornication statute was Claudio, a well-born young man who impregnated Juliet his betrothed, without solemnizing their engagement by marriage.²² In the hope of obtaining her friends'

²⁰ *Id.* act 3, sc. 2, l. 121.

²¹ *Id.* act 3, sc. 2, ll. 90-91.

²² See generally Michael Jay Willson, Note, *A View of Justice in Shakespeare's The Merchant of Venice and Measure for Measure*, 70 NOTRE DAME L. REV. 695

approval and subsequent grant of a dowry, Claudio and Juliet decided to postpone the public declaration that would have legitimized the union in the eyes of the law and arguably the church.²³ Juliet's pregnancy provided the authorities with the necessary evidence of fornication and Claudio was publicly escorted to prison where he awaited his fate.

In the play, Claudio and Juliet's betrothal was meant to be ambiguous because in actuality the history of marriage law was confusing and subject to multiple jurisdictions, ecclesiastical and secular. Canon law started with the simple requirement of consent in order to make compliance with the marriage laws easy.

In the thirteenth century, Pope Innocent III, following the canon lawyer Gratian and Pope Gregory IX in the twelfth, had decreed that free consent of both spouses, not the formal solemnities by a priest or in a church, was the sole essence of marriage. Consequently, a valid and binding marriage was created by a mere verbal exchange of vows to this effect between a man and a woman over the age of consent (14 and 16, respectively), witnessed by two persons, and expressed in the present tense.²⁴

(1995) (describing Shakespeare's views on how society has continually struggled with what it means to be just).

²³ See MEASURE FOR MEASURE, *supra* note 12, act 1, sc. 2, ll. 128–31; Arthur H. Scouten, *An Historical Approach to Measure for Measure*, 54 PHILOLOGICAL Q. 68, 70 (1975) (noting that William Russell, overseer of Shakespeare's will, was in the same situation as Claudio "and then got married late in the summer of 1603 [26 August], just before Shakespeare began composing *Measure for Measure*"); ANN JENNALIE COOK, MAKING A MATCH: COURTSHIP IN SHAKESPEARE AND HIS SOCIETY 143–45, 212–14 (1991) (discussing money and courtship in Shakespearean times). Applying Maria L. Cioni, WOMEN AND LAW IN ELIZABETHAN ENGLAND WITH PARTICULAR REFERENCE TO THE COURT OF CHANCERY 88 (1985), to Juliet's situation, Claudio and Juliet may have had to sue her guardian for her property in chancery in the event, where she would have had more power with a husband to help her retrieve her property from her friends who had the incentive to control it as long as possible.

²⁴ LAWRENCE STONE, ROAD TO DIVORCE: ENGLAND 1530–1987, at 52 (1990); see CHARLES DONAHUE, JR., THE POLICY OF ALEXANDER THE THIRD'S CONSENT THEORY OF MARRIAGE, PROCEEDINGS OF THE FOURTH INT'L CONGRESS OF MEDIEVAL CANON LAW (1976) tracing the origin of the policy of consent between the contracting parties as the sole requirement of a valid marriage. The following passage from RICHARD H. HELMHOLZ, ROMAN CANON LAW IN REFORMATION ENGLAND 69 (1990), underlines the plight of Claudio in face of the anti-fornication statute:

Medieval canon law had allowed a man and woman to enter into a binding and indissoluble marriage merely by exchanging words of present consent. No public ceremony, no publication of banns, no approval of the couple's

Secular authorities wished to deter illegitimate births and early reformers disapproved of private marriage contracts, thus the Elizabethan clergy preached against them. At common law, a spousal (or betrothal) was not sufficient to pass real property at death, including life estates such as the widow's dower. While that might have been advantageous to the wife, since the husband could not exercise rights over an espoused wife's property and she did not suffer any of the coverture disabilities, her oldest son could not succeed upon his father's death as legitimate heir to his real property.²⁵

Claudio claimed that a spousal in which *verba de praesenti* (present vows) were exchanged allowed them to consummate their relationship, but they kept it secret and did not solemnize it in church because they were waiting for her friends to collect her dowry.²⁶ Judge Angelo maintained that a lack of public declaration did not amount to a contract, although Claudio attested that a private valid contract exists: "Upon a true contract . . . she is fast my wife,/ Save that we do the denunciation [announcement] lack/ Of outward order."²⁷ Claudio and Juliet's private marriage, lacking announcements and witnesses, opened them up to the charge that they were not married.²⁸ Further, Juliet's friends had not gathered her dowry

family, no sexual consummation were required. Only a contract, made by *verba de praesenti*, between consenting parties was necessary.

²⁵ HELMHOLZ, *supra* note 24, at 69–70.

²⁶ MEASURE FOR MEASURE, *supra* note 12, act 1, sc. 2, ll. 124–36.

²⁷ *Id.* act 1, sc. 2, ll. 126–30.

²⁸ Many court cases were brought on the issue of marriage without witnesses. Martin Ingram, *Spousal Litigation in English Ecclesiastical Courts c. 1350-1640*, in MARRIAGE & SOCIETY 35 (R.B. Outhwaite ed. 1981). During the XIII century, the church recognized mantle children (that is, children born before their parents had married each other) as legitimate. In the Statute of Merton c. 9 (1236), the barons made property succession law stricter than church law for the legitimacy of children. J. H. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 490 (3d ed. 1990) (noting that the Legitimacy Act, 16 & 17 Geo. V, c. 60 changed the rule in the Provisions of Merton on special bastardy). Queen Elizabeth did not marry because of the control a husband would have over her. Given the terrible example of her father's execution of her mother Queen Anne, it is of hypothetical interest to students today to ask whether an irregular marriage might have prevented husbands from controlling their wives' property. *See id.* at 559. For the most part, however, heiresses did not have irregular marriages since their families took care to ensure that the property would be properly passed to the next right heir. Therefore, there was no hope of using an irregular marriage to escape coverture. *Id.* at 560–61. Henry VIII had himself married Elizabeth's mother Anne Boleyn in a secret marriage in January of 1553. *See* SIR DAVID LINDSAY KEIR, THE CONSTITUTIONAL

and Claudio waited to arrange the formalities. As a result, Claudio's fate had become a matter of legal dispute. Thus, the first person to be ensnared by the anti-fornication statute was a young man in love with his fiancée, his actual wife according to the ecclesiastical courts.

This fact pattern also connected commercial gain and sex. In brothels, the connection was obvious but even in Claudio's situation, insufficient money or property given upon marriage causes delay. Morally, because of the ties of affection between the couple, the desire for the dowry does not rise to the same level of social unacceptability. One commentator suggested that *Measure for Measure* "so qualifies the concept of distributive justice that it amounts to . . . questioning [the entire notion]."²⁹

Claudio initially appeared on stage as the subject of dismayed gossip in the streets of Vienna as his misfortune was reflected in the rumors spread throughout the city, eliciting the sympathy and the disgust of individuals on the streets and in the audience. Moments later, officers paraded the shackled Claudio through the streets, forcing him to explain himself to those he knew when he met them along the way. Claudio sadly noted the inherent irony in how his restraint (literal and figurative) came "From too much liberty" as well as the nature of human vice when "Like rats that ravin down proper bane/ A thirsty evil, and when we drink, we die."³⁰ The freedom to which Claudio refers in his lament is both liberty of person and liberty of conscience, the ability to use mind and body in the manner he so chooses, even if the result was a compromising vice.

Furthermore, Claudio used the public forum to relay his version of his betrothal to those present and opined that perhaps Angelo's motivation involved the public as well, since "for a name/ [Angelo] [n]ow puts the drowsy and neglected Act/ Freshly

HISTORY OF MODERN BRITAIN 1485–1951, at 62 (1953).

²⁹ White, *supra* note 11, at 23–24. White suggests that Book V of Aristotle's *Nicomachean Ethics* at 1130a shows that the purpose of the Viennese law was to reach the brothel but not Claudio:

[I]f one man commits adultery for the sake of gain and makes money by it, while another does so at the bidding of appetite though he lose money and is penalized for it, the latter would be held to be self-indulgent rather than grasping but the former is unjust, but not self-indulgent; evidently, therefore, he is unjust by reason of his making gain by his act.

Id. at 24 (quoting 9 THE WORKS OF ARISTOTLE 1130a (W. D. Ross ed. Oxford University Press 1915)).

³⁰ MEASURE FOR MEASURE, *supra* note 12, act 1, sc. 2, ll. 107, 111–12.

on me: 'tis surely for a name."³¹ This Viennese statute against fornication was stated in the play to have been on the books for years, yet not enforced. Angelo had seemingly seized the opportunity to gain public recognition by administering a questionably invasive law.³² Therefore, in order to provide public notice that the statute would now be regularly enforced, Angelo subjected Claudio to public humiliation for his private acts, which he presumably hoped might encourage the public to follow the decree (in private).

One reason for Claudio's notoriety was his status as a member of the gentry, highly regarded by both his fellow gentlemen and the lower classes. Mistress Overdone, upon informing Lucio and his cohorts of Claudio's punishment, classified Claudio as "worth five thousand of you all."³³ Of course, Mistress Overdone's comparison addressed both Claudio's wealth and his gentility. Her statement was more significant than idle gossip because it carried Shakespeare's theme of equity to the streets and suggested that the law's treatment of different offenders was less than optimal.

For example, though her presence on the stage was quite minimal, Juliet's version of the punishment provided an interesting perspective and should not be overlooked. Juliet confessed to the Duke while he was in the guise of Friar Lawrence. However, the Duke, the apparent voice of reason throughout the play, guided Juliet through an examination of her behavior in an arguably self-serving line of questions since he chose not to enforce the statute. The friar first asked her if she loved Claudio and she responded that she did as much as she loved herself. The friar/Duke concluded, commenting more than questioning, "So then it seems your most offenceful act/ Was mutually committed[?]"³⁴ Juliet agreed that they acted mutually, which, after all, was the only requirement for a valid marriage at the time of the play. The friar nevertheless contended that Juliet's sin was "of heavier kind than [Claudio's]."³⁵

³¹ *Id.* act 1, sc. 2, ll. 150–52.

³² "The law which is the crux of *Measure for Measure* . . . is not in accord with nature, and this view is put so many times by so many characters, and implied so often in their actions that it cannot be dismissed." WHITE, *supra* note 11, at 178.

³³ MEASURE FOR MEASURE, *supra* note 12, act 1, sc. 2, l. 50.

³⁴ *Id.* act 2, sc. 3, ll. 26–27.

³⁵ *Id.* act 2, sc. 3, l. 28.

This conversation has progressed from a discussion of Juliet's love for Claudio to the public or social offensiveness of fornication to Juliet's culpability in Claudio and Juliet's mutual decision. Shakespeare placed the two lovers on the scales in respect to each other, and Juliet, according to Friar Lawrence, bore the heavier weight (as she now does in the literal sense as well).³⁶ Such an assessment that the woman was to blame was indeed expected from the clergy of the day. The friar/Duke gave himself away when he inquired into the mutual nature of the act after questioning Juliet's feelings for her betrothed. He made his assessment about what to do in Claudio's case. The friar's interest in the matter of responsibility symbolized the great disparity between the sin of fornication and the acceptable union of two betrothed persons lacking only public acknowledgement of their relationship. The statute had the goal of regulating irresponsible and uncommitted relationships, but its supporters saw publicly proclaimed marriage as the only relationship in which sex may be channeled. Shakespeare had placed the Puritan ideals of deterring sin and imposing punishment against his assessment that legislating the death penalty for all premarital sexual intercourse, even in matters of the heart, was dangerous and futile. Of course, evidence of fornication existed only if pregnancy ensued.

Shakespeare presented Claudio as a noble character in the sense that his intentions with his betrothed were pure in comparison to the other male candidates for marriage or punishment. Claudio pronounced his love for his betrothed and his intentions to marry her publicly once her "friends" approved of the pairing enough to assemble the dowry. The statute demanded death but love subjected Claudio to this punishment, whereas in the same situation before the revival of the statute, Lucio intended only to gratify his lust and not to admit his paternity of Kate's child. And Angelo, who would enforce the statute against Claudio, similarly intended only to satisfy his greed for Isabella.

³⁶ See generally RICHARD ADAIR, *COURTSHIP, ILLEGITIMACY AND MARRIAGE IN EARLY MODERN ENGLAND* (Manchester, 1996); *BASTARDY AND ITS COMPARATIVE HISTORY* (Peter Laslett, Karla Oosterveen & R.M. Smith eds., 1980) (finding that the illegitimacy ratio changed over time, high around 1600 and declining to a nadir around 1650, climbing gradually thereafter until 1750 and then steeply). Adair gave rates by region and time.

At the end of the play, the Duke ordered the public marriage of Claudio and Juliet. The significance of this may have been that at the time the play was written, rulers were proclaiming their divine right to approve the validity of ancient customary law or to promulgate their own version of that customary law as positive law. Thus, if Claudio and Juliet already were espoused, as Claudio asserted, the validity of the marriage depended not on old church law or custom, but on the Duke's proclamation.³⁷

The events in the play force the reader to wonder whether the subtle difference between a public marriage versus a private engagement should be the determining factor in a man's execution. Should the law have regarded covert declarations of love and intent to marry as less honorable than open declarations endorsed by a bit of gold? Further, should the law have even concerned itself with matters of such a private nature since a public declaration changes nothing for those betrothed? If Claudio were executed, Juliet's child would have to be supported by parish charity or some similar public provision. By placing Claudio in a public context Shakespeare presents this contradiction as a both a flaw in the statute and Judge Angelo's strict adherence to it.

Shakespeare started within the context of the property and bargaining aspects of marriage in medieval society and acknowledged the possibility of love existing in a marriage.³⁸ He

³⁷ HOPKINS, *supra* note 13, at 82 (quoting MEASURE FOR MEASURE act 5, sc. 1: "She, Claudio, that you wronged, look you restore").

³⁸ See BROOKE, *supra* note 14, at 142 (noting that aristocratic lay society deliberately accepted monogamy which the church sponsored because it fit in with their economic purposes of establishing dynasties). If a marriage, for example, between Claudio and Juliet, took place in private between two consenting parties should the contract be valid? What, if any, role should dowry play in the applicability of the statute? How much should the criminal law be used to determine private matters, or is this statute a family law and contract law statute? Did the criminal anti-fornication statute vitiate mutual consent or are we willing to subject private agreements to government decrees? If two parties are committed to each other, should their intent be used to ameliorate the application of the death penalty this criminal statute provided? If a nobleman was caught in the statute's web and condemned to death, was the statute free of class-bias? If a pregnancy was involved, should that proof of the crime have acted as an argument against *ex post facto* punishment? If the pregnancy could have been hidden, or the woman would not reveal the father's identity or the father denied paternity—after all, the man was the party who received the punishment—is the statute thwarted, thereby bringing the law itself into disrepute? Should the child's future matter if the father was otherwise to be executed? In the first instance of application of the statute, should the community have had the right to expect strict enforcement to deter

portrayed Claudio as an almost-martyr who sensed the medieval priority of the premarital contract of betrothal and who, therefore, tried to win twice over: loving his betrothed while waiting for her dowry. The anti-fornication statute, however, prioritized the dowry: leaving loving one's betrothed punishable by death. Shakespeare made a sharp commentary on the hypocrisy of the Viennese attempt to protect the sanctity of a union before marriage by executing a man for expressing his love prior to being blessed with gold. The people who inhabited this Vienna, however, contributed to a successful avoidance of the unnecessary sentence and Claudio became the passive beneficiary of a scheme that saved his life. In this cooperative effort, the very public which the statute deemed offended by the lack of notice of Claudio and Juliet's betrothal instead appeared to rally for the protection of matters of the heart and the disentanglement of the law from these private decisions.

In the end, as he doled out punishments and rewards, righting the wrongs of the unreasonable law, the Duke's only requirement of Claudio was to return to the woman he wronged, Juliet. Apart from the fear of death and his publicly denounced imprisonment, Claudio's only sentence was to marry his betrothed, enforcing his original intent, though Juliet's friends might not supply the much sought after dowry. The Puritans who sought enforcement of this law forgot their endeavor was to protect the sanctity of God's union by punishing a man whose actions exemplified the appropriate love necessary for a sanctified coupling.

C. Angelo and Mariana: For Loss of Money, Marriage Plans Are Abandoned

Only well into the play did we learn that Angelo experienced a broken engagement, which he repudiated due to the loss of his fiancée's dowry at sea. According to Elizabethan law, such a precontract could be unilaterally revoked on failure of a condition, provided the relationship had not been sexually consummated. For example, if Angelo had said, "I'll marry you after the dowry arrives," then the condition could not be fulfilled if it were lost at sea. Although he had seemingly broken

similar future behavior?

Mariana's heart as well, Angelo's revocation appeared legal, but morally questionable since he broke the engagement due to pure greed.

The audience only discovered Angelo's blemished history through the Duke's scheme to enlighten Angelo about his own humanity. Up to this point in the play, Angelo enjoyed a reputation as a scrupulous member of society, according to Lord Escalus, a man of "such ample grace and honour" as to be worthy of the Duke's appointment.³⁹ Another reading of the initial scene of the play intimated the Duke's disapproval of Angelo's seemingly virtuous appearance and mixed motives in appointing Angelo. In his call to duty, the Duke commented to Angelo that, "There is a kind of character in [his] life/ That to th'observer doth [his] history/ Fully unfold."⁴⁰ This opinion suggested that Shakespeare intended to inform the audience of Angelo's past and to elaborate on the exact character to which the Duke refers. Angelo represented human weakness in the form of pride and hypocrisy. The Duke nevertheless reassured Angelo that he had "with a leavened and prepared choice/ Proceeded to you,"⁴¹ implying a deliberate selection. As the Duke insinuated, however, Angelo's appointment to office may have reflected the Duke's disapproval of Angelo's virtues rather than his admiration. The Duke conceded that Angelo was "[a] man of stricture and firm abstinence," perhaps favorable qualities for a public figure in a society in which the laws had become "dead to infliction" and "Liberty pluck[ed] Justice by the nose;/ The baby beats the nurse, and quite athwart/ Goes all decorum."⁴² The Duke, however, did not only assign Angelo this duty to realign Vienna's moral stance, but also to test Angelo's own moral fiber since the Duke noted that Angelo "scarce confesses/ That his blood flows, or that his appetite/ Is more to bread than stone."⁴³

After Angelo's official announcement to his cabinet of his plan for a new Vienna, the ancient lord Escalus considered Angelo too severe and pitied Claudio's circumstance. Escalus commented that, "Mercy is not itself, that oft looks so,/ Pardon is

³⁹ MEASURE FOR MEASURE, *supra* note 12, act 1, sc. 1, l. 23.

⁴⁰ *Id.* act 1, sc. 1, ll. 27-29.

⁴¹ *Id.* act 1, sc. 1, ll. 51-52.

⁴² *Id.* act 1, sc. 3, l. 13, 29-32.

⁴³ *Id.* act 1, sc. 3, ll. 52-54.

still the nurse of second woe."⁴⁴ By giving other views than Judge Angelo's, Shakespeare prepared us for the fuller representation of the value of mercy. The provost, as well, attempted to dissuade Angelo from executing this harsh sentence, subtly suggesting that "after execution, judgment hath/ Repented o'er his doom."⁴⁵ The provost's comment merely enraged Angelo, who would not be told how to perform his duties, and admonished the provost to see to his own responsibilities or lose them entirely.⁴⁶ In the comments of other characters, Shakespeare presented an unfavorable picture of Angelo's judgment and ability to achieve trust as a public leader. In stark contrast, however, was Angelo's self-perception. Shakespeare painted him as a victim of the utmost self-deception and pride. Angelo rejected Escalus' suggestion that he might have fallen prey to the temptation for which Claudio must die and claims, " 'Tis one thing to be tempted, Escalus/ Another thing to fall."⁴⁷

The greater mirror for Angelo was his betrothal to Mariana and its resemblance to the course of Claudio and Juliet's relationship later on in the play. The situations differed in that Claudio and Juliet's betrothal lacked an accompanying public announcement while Mariana and Angelo had a future contract to marry that was arguably broken lawfully by Angelo. The Duke himself disregarded this repudiation as he reassured Mariana "fear you not at all./ He is your husband on a pre-contract: To bring you thus together, 'tis no sin,/ Sith that the justice of your title to him/ Doth flourish the deceit."⁴⁸ The deceit which the Duke referred to is, of course, his scheme to have Mariana take the novice Isabella's place in bed with Angelo, thus

⁴⁴ *Id.* act 2, sc. 1, ll. 244-45.

⁴⁵ *Id.* act 2, sc. 2, ll. 11-12.

⁴⁶ In contrast, at the end of the play, the Duke promotes the provost: "Thanks, provost, for thy care and secrecy,/We shall employ thee in a worthier place." *Id.* act 5, sc. 1, ll. 522-23. Since Angelo could no longer serve as a judge, the Duke needed a new recruit. The provost, a more moderate official, versed in equity and sympathetic to human weakness, fulfills the requirements, which Angelo could not.

⁴⁷ *Id.* act 2, sc. 1, ll. 17-18.

⁴⁸ *Id.* act 4, sc. 2, ll. 71-75. Angelo, however, denied a precontract. *Id.* act 5, sc. 1, ll. 214-22. In the end Angelo acknowledged his precontract with Mariana. *Id.* act 5, sc. 1, ll. 367-69. See generally Karl P. Wentersdorf, *The Marriage Contracts in Measure for Measure: A Reconsideration*, 32 SHAKESPEARE SURVEY 129, 129 (Kenneth Muir ed., 1979) (summarizing critics' interpretations of the role of marriage contracts in the play).

reasserting Angelo's broken precontract through sexual relations.⁴⁹

Shakespeare invites the audience to compare which relationship is more harmful and which more legitimate: Claudio and Juliet's private betrothal with sincere intentions or Angelo and Mariana's strictly observed and legally broken engagement which must be reinstated through deceitful and manipulative means. Both couples thus engaged in sex before marriage. Although the purpose of the statute was to deter fornication, Shakespeare presented a scenario in which, according to the statute, both couples commit fornication. Judge Angelo chose to use the statute to condemn Claudio even when he asked Isabella to commit fornication with him. Angelo's suggestion of the way to save Claudio from death, as he told Isabella, was central to destroying the integrity of the statute because Angelo secretly intended not to alter Claudio's sentence, even though Angelo himself planned to commit fornication.

Mariana was under no illusion about Angelo, as demonstrated by her forced to disclosure of the truth about Angelo because the Duke required two witnesses to prove Angelo's sexual extortion of Isabella. Mariana sought mercy for Angelo, knowing his flaws, sins, and crimes. Mariana's successful plea for mercy allowed Angelo a future where he would have the chance to reform his behavior. By the close of the play, Angelo was a contrite and ashamed man, claiming that "so deep sticks it in my penitent heart/ That I crave death more

⁴⁹ See generally William R. Bowden, *The Bed Trick, 1603-1642: Its Mechanics, Ethics and Effects*, in 5 SHAKESPEARE STUDIES: AN ANNUAL GATHERING OF RESEARCH, CRITICISM AND REVIEWS 112-23 (J. Leeds Barroll ed., 1969); Robert S. Mikkelsen, *To Catch a Saint: Angelo in Measure for Measure*, 7 WESTERN HUMANITIES REV. 261, 261-75 (1958); A.D. Nuttall, 'Measure for Measure': *The Bed Trick*, in 28 SHAKESPEARE SURVEY: AN ANNUAL SURVEY OF SHAKESPEARIAN STUDY AND PRODUCTION 51-56 (Kenneth Muir ed., 1975).

Concerning Angelo and Mariana's case, if a spousal contract was broken solely due to the lack of a dowry, should the intent to marry or the intent to gain the dowry have affected punishment? When the contract-breaker was a judge, who revived the enforcement of the statute, should the judge be held to a higher ethical standard? Should his knowledge of the law impact his personal practices? If he committed fornication with a woman whose identity he did not know, should the statute be triggered? Since the woman with whom he committed fornication happens to be the same woman with whom he broke his contract, should the previous duty he owed her be revived? Should the death penalty be excused if the judge agrees to marry the woman he had previously spurned?

willingly than mercy.”⁵⁰ The Duke, of course, rejects this plea, further emphasizing the disparity between Angelo’s conception of the law and the Duke’s beliefs; even with regard to himself, Angelo would have had the strictest enforcement. Angelo lacked tolerance for human weakness, however, by failing to assess the situation in the play as an opportunity for personal growth, he tolerated the same weakness even less in himself. Perhaps for this reason the Duke, despite his sexual extortion of a supplicant, did not order Judge Angelo’s death, but rather required him to marry. The Duke’s mercy may have led to Angelo’s salvation whereas a strict application of the statute might have resulted in Angelo’s damnation. What greater path to tolerance exists than marriage?

D. Claudio and Isabella: A Brother’s Desperate Need Transgresses Into a Sister’s Personal Integrity

Isabella was the pivotal character in *Measure for Measure*, morally stronger and more consistent than the Duke, personifying the divine quality of mercy. At first Isabella asked Judge Angelo to show mercy upon her brother Claudio and then even after Angelo had, as far as Isabella and Angelo knew, carried out her brother’s death sentence, Isabella asked the Duke for mercy for Angelo himself. As the young novice who just joined a strict convent, Isabella was also the character in the play that grew the most, even learning charity toward Angelo who wronged both her, with an extortionate sexual proposal, and her brother, condemning him to death when he promised Isabella he would be merciful. In contrast, the much-experienced Duke had already spent years ruling Vienna and years studying himself. The remaining scenarios involve Isabella in her relationship with her brother Claudio, Judge Angelo, and the friar/Duke.

In the relationship between Claudio and Isabella, who are siblings, we are invited to explore what legitimate demands and claims they may make upon each other. Both Isabella and Claudio were quite young, but they had already lost their father. Many people found the young Isabella too caught up in herself when she refused to be extorted by Judge Angelo.⁵¹ It was not at

⁵⁰ MEASURE FOR MEASURE, *supra* note 12, act 5, sc. 1, ll. 468–69.

⁵¹ See Scouten, *supra* note 23, at 71–75. Scouten noted that Thomas Heywood’s

all certain whether Shakespeare was asking us to accept as reasonable that Isabella should have paid the price Judge Angelo criminally demanded to save her brother's life, or that Claudio was fair in asking her to save him from an unfair death. That is in fact the beauty of Shakespeare's presentation of this relationship—loosely sketched and ambiguous, in order to stimulate thought and arguments on each side.

Unlike other characters who were developed in relationship to each other, Claudio and Isabella's relationship was presumed in the words "brother and sister." Other than their one meeting in the play, they did not speak to each other. In this hard case situation, the brother's life was balanced against the illegal and the criminal demand upon his sister to commit the very crime for which he was to be executed, in order to save her brother's life. While Isabella saw herself in terms of her ideals, Claudio saw himself as a noble character, yet he failed to consider the emotional damage that could have been inflicted upon his sister as a result of what Isabella could only have seen as a rape. Furthermore, as a novice in the sisterhood, Isabella was at least theoretically a "sister" to Angelo, as she was to all other human beings.⁵²

Claudio reminded his sister of his respected status as he pleaded with her to consider Judge Angelo's proposal. Isabella demanded rhetorically, "Is't not a kind of incest to take life/From thine own sister's shame?"⁵³ Prior to Isabella informing Claudio

play *A Woman Killed with Kindness*, produced around 1602, dealt with a young woman who was praised in the course of the play for being ready to sacrifice her chastity to redeem her brother's honor. *Id.* at 73 (attributing this thought to author ROBERT ORNSTEIN, *A KINGDOM FOR A STAGE* 11-12 (1972)).

⁵² See *MEASURE FOR MEASURE*, *supra* note 12, act 1, sc. 4, ll. 1-15 (describing Isabella's arrival at the ascetic order of the Poor Clares); MARC SHELL, *THE END OF KINSHIP: 'MEASURE FOR MEASURE,' INCEST AND THE IDEAL OF UNIVERSAL SIBLINGHOOD* 59, 103 (1988). The Poor Clares' papal 'privilege of poverty' allowed each nun to give up any property she had by distributing her goods to the poor. *Id.* at 106.

⁵³ *MEASURE FOR MEASURE*, *supra* note 12, act 3, sc. 1, ll. 138-39. See Shell, *supra* note 52, at 102 (suggesting several meanings for Isabella's rhetorical statement, including the notion that sex on behalf of Claudio was "to all intents, a sexual act committed with that person . . ."). Further, if Claudio was to live because Isabella had sex with Angelo, Claudio would be her "son as well as her brother." See *id.* at 154.

The effect of the statute on Claudio and Isabella's relationship was demonstrated in the following scenes. By engaging with the judge in the same act of fornication for which her brother was condemned, Isabella presumably had a chance to save her brother's life. The man offering to save the convict in return for

of Angelo's attempt to extort her, Claudio nobly accepted his fate: "If I must die/ I will encounter darkness as a bride/ And hug it in mine arms."⁵⁴ Claudio, exhibiting characteristic Shakespearean disenchantment with this mortal life, laments, "To be imprison'd in the viewless winds/ And blown with restless violence round about/ The pendent world, or to be worse than worst / Of those that lawless and incertain thought/ Imagine howling; 'tis too horrible."⁵⁵ Isabella praised her brother's nobility and relaid Angelo's plans, as the audience observed Claudio's courage in the face of death markedly wane as soon as any alternative appeared.

In doing so, Claudio was humanized and made all the more appealing, going so far as to place his death against his sister's shame on the scales of justice. He argued that her shame is worth saving his life and that, in true lawyerly fashion, "What sin you do to save a brother's life,/ Nature dispenses with the deed so far/ That it becomes a virtue."⁵⁶ Isabella summarily rejected her brother's argument that the end justified the means. Once Claudio offended his sister into disbelief at his utterances, he accepted his fate, wishing to beg his sister's pardon since he is "so out of love/ With life, that [he] will sue to be rid of it."⁵⁷ Again, Claudio's nobility was marked in the mind of the audience and the Duke, with whom Claudio had earlier spoken in his guise as the friar. This is notable because the Duke eventually overturned Claudio's sentence with this fact very much in consideration.

Act IV presented the most notable evidence of Claudio's reputation among the other characters as a man worthy of saving. The provost heard a knock at the door, admitting to the audience that he hoped "it [was] some pardon or reprieve/ For

sex (extortion) was the very judge who reinstituted the statute. When extortion was involved, should the anti-fornication statute still apply to the judge who enforced the statute rigorously against the condemned man? How was this exchange of sex for a life different from sex for money? Or is sex still a commodity by serving as a means of exchange to facilitate a pardon? With the victim of extortion a novice in a convent, what about her own marriage contract with God? Her brother, Claudio, sentenced to death, was cast as well loved and had the best intentions regarding his private spousal contract. Should the death penalty still apply to the judge who had the worst intentions regarding Isabella?

⁵⁴ MEASURE FOR MEASURE, *supra* note 12, act 3, sc. 1, ll. 82-84.

⁵⁵ *Id.* act 3, sc. 1, ll. 124-28.

⁵⁶ *Id.* act 3, sc. 1, ll. 134-36.

⁵⁷ *Id.* act 3, sc. 1, ll. 168-69.

the most gentle Claudio.”⁵⁸ The disguised Duke presented himself and convinced the law-abiding provost to assist in a plan to kill another man in Claudio’s place, keeping Claudio alive until the Duke revealed himself and denounced Angelo’s power. Such an elaborate scheme, contrary to the rules of law, lead the audience to wonder whether a ruler who schemed and deceived so much to bring about the right result was doing something wrong. Can the absolute ruler break the rules, if not the law, and allow his officials to do the same? The provost acted contrary to his oath. Despite the reassurances from the friar that he would not be in the Duke’s disfavor as a result of such action, the provost placed his reputation on the line for Claudio’s life in yet another measure to avoid the imposition of sentence on Claudio.

Shakespeare directed the law’s gaze to the offender’s intent; an honest intention to devote oneself to another should not be determined by the presence of gold, but the presence of love. Claudio was an average and typical young man, exactly the person who should not be executed for violating a statute prohibiting the behavior of the average and typical young man. In fact, what Claudio did was not actually forbidden by law in England until the reform of the marriage laws in 1752. Nevertheless, Claudio was automatically condemned and did not plead his precontract with Juliet before Judge Angelo. The disparity between Isabella and Claudio’s views of Angelo’s extortion is further exemplified in their perceptions of the law and of right and wrong in general. Claudio, whether out of convenient naiveté or adroit argumentation, interpreted Angelo’s offer as legal according to the state and the church. Claudio considered Angelo’s criminal breach of judicial ethics as somehow justifiable since Angelo was a judge and knew the law, “If it were damnable, he, being so wise,/ Why would he for the momentary trick/ Be perdurably fined?”⁵⁹ Claudio presumed this without thinking that Angelo took into consideration the moral and legal ramifications. Claudio willingly accepted bending the rules because he wanted to live and he recognized that life was not subjected to a strict set of moral codes applicable to all situations.

⁵⁸ *Id.* act 4, sc. 2, ll. 58–59.

⁵⁹ *Id.* act 3, sc. 1, ll. 112–14.

This scene demonstrated the impossible demands a harsh penalty for fornication placed on the offender, his sister, and indeed the criminal justice system itself as it aroused the purient interests of the judge and compelled him to extort sex from a virgin to save a purported fornicator. Isabella's character, in contrast to Claudio's more worldly experience, was that of an impressionable young woman committed to mercy and the rule of law in her own life. She assumed that everyone aspired to the same code. To some, Isabella appeared sanctimonious and self-centered. On arrival at the convent to begin her novitiate, Isabella pronounced herself as "wishing a more strict restraint/ Upon the sisterhood" during her first inquiry about the rule under which she must live.⁶⁰ To others, Isabella, with her ardent, inexperienced enthusiasm, evoked the audience's sympathy for a virtuous, idealistic and sincere young woman, who nevertheless possessed the pride of one yet untested. Her combination of her own strict devotion to the law and invocation of mercy for others illustrated the law and mercy united in one character.

In contrast to her brother, Isabella therefore saw Angelo's extortion as a zero-sum game: if Claudio won his life by Isabella's compliance, Isabella would have lost. She confided in the friar/Duke that she "had rather [her] brother die by the law than [her] son should be unlawfully born."⁶¹ Unlike Claudio and much like Angelo, Isabella regarded the law as a set of rules that must be followed even at great cost. She was dismayed to learn, as she marveled to the friar/Duke, "What corruption in this life, that it will let [Angelo] live?"⁶² Thus, Isabella was not a self-righteous hypocrite like Angelo but an inexperienced young woman devoted both to following the rules and to seeking mercy.

Here, the hard case did not make bad law, but the bad law made those subject to it face impossible choices. More elegantly than the law professor placing a case in the classroom, Shakespeare dramatized the complications in application, arising from a poorly conceived statute, by presenting a brother-sister relationship susceptible to an abuse of trust. The siblings' only scene together was a powerful examination of the marked differences between the moral convictions of a virgin, who was also a novice in a religious order, and her brother, who believed

⁶⁰ *Id.* act 1, sc. 4, ll. 4–5.

⁶¹ *Id.* act 3, sc. 1, ll. 184–85.

⁶² *Id.* act 3, sc. 1, ll. 220–21.

that virginity should not stand in the way of love. For Claudio, virginity could be put aside with the commitment of a betrothal when a church wedding would jeopardize receipt of a dowry.

E. Angelo and Isabella: Rigor of Justice and Lustful Extortion v. Mercy and Rigor of Purity

Shakespeare presented Angelo with the opportunity for self-knowledge— to perceive himself as having a faulty character and thus align himself with those he governed. This self-examination occurred when Isabella, Claudio's sister and a novice in the convent of the Poor Clares, begged Angelo for mercy toward her brother, resulting in Angelo's "blood [mustering] to [his] heart,/ Making both it unable for itself/ And dispossessing all [his] other parts/ Of necessary fitness?"⁶³ The relation between Isabella and Angelo represented the clash between harsh puritanical application of human law and equity infused by divine mercy. This encounter not only revived Angelo's humanity by stirring feelings of attraction and lust for Isabella, but also caused him to sink morally beneath the crime of fornication for which he intended to have Claudio executed. He extorted sex from Isabella and went as far as accusing her of being cruel and tyrannical for not cooperating with his sordid, criminal proposition, telling her, "You seemed of late to make the law a tyrant,/ And rather proved the sliding of your brother/ A merriment than a vice."⁶⁴ Furthermore, Angelo threatened Isabella not to report his crime by intimidating her: "My unsoiled name, th'austereness of my life,/ My vouch against you, and my place i'th' state,/ Will so your accusation overweigh."⁶⁵ This statement was an absolute representation of Angelo's hypocritical stance on the anti-fornication statute.

The two conversations between Isabella, pleading for her brother's life, and Angelo, attempting to maintain his version of legal integrity, serve as an example of the conflict between public and private law, providing an example of the shortcomings of the human administration of divine law. These exchanges illustrate another set of circumstances to test the proposed English statute in the form of a dialogue, presenting a direct comparison to the

⁶³ *Id.* act 2, sc. 4, ll. 20–23.

⁶⁴ *Id.* act 2, sc. 4, ll. 115–17.

⁶⁵ *Id.* act 2, sc. 4, ll. 156–58.

legally venerated Socratic method. Furthermore, Isabella and Angelo represent opposing extremes, both excessive and severe in their own right, whose conflict supports the thematic conflict of mercy and justice as interpreted by human authority.

Angelo took his post of restoring the order of the fallen world quite seriously. While he did entertain the pleas of Isabella, a loving sister, Angelo reminded her throughout their initial exchange that he was devoted to the letter of the law. Angelo refused to expand his authority to include merciful considerations and pronounced to Isabella, "Look what I will not, that I cannot do."⁶⁶ Isabella was his polemic opposite in advocating for mercy. In their first encounter she failed to win his support because she told him the insulting truth that, "If he had been as you, and you as he,/ You would have slipped like him, but he like you/ Would not have been so stern."⁶⁷ Mercy informed equity when Isabella told Angelo what to do. Isabella invoked this divine quality of mercy, but her request fell on deaf ears because Angelo saw the harshness of purely human law detached from the divine. This break from the divine resulted from human weakness and limitation. Isabella's invocation of mercy was the crux of the play. Isabella saw imperfect human law as capable of being bettered or even tempered by divine mercy. Angelo saw only the dutiful exaction of the law. He viewed his position as bound by the law's demands, as instead of the law being a function of his power, he was a function of the law's power. He feigned to have no discretion whatsoever and claimed, "It is the law, not I, condemn your brother."⁶⁸ Angelo's narrow outlook also reflected the Puritan viewpoint in England at the time the play was written.

The audience may well have imagined Angelo, bursting with the self-deluding pride of his appointment as deputy, schooling Isabella on his accomplishments thus far in office and reminding her that, "The law hath not been dead, though it hath slept."⁶⁹ Shakespeare drew an artful metaphor to the life stirring in Juliet's womb as Angelo explained that the law saw "what future evils—/ . . . new-conceived,/ And so in progress to be hatched and

⁶⁶ *Id.* act 2, sc. 2, l. 53.

⁶⁷ *Id.* act 2, sc. 2, ll. 65–67.

⁶⁸ *Id.* act 2, sc. 2, l. 82.

⁶⁹ *Id.* act 2, sc. 2, l. 93.

born."⁷⁰ Angelo spoke quite plainly here of the behavior which the law sought to curb, all the while setting a very high standard of conduct for everyone, most notably himself, to maintain.

Angelo quickly connected this commentary on what we today would consider private behavior with his public duty to authorize such entanglement. Angelo shared his peculiar brand of justice with the entreating novice, claiming that he showed pity "most of all when I show justice;/ For then I pity those I do not know,/ Which a dismissed offence would after gall,/ And do him right, that answering one foul wrong/ Lives not to act another."⁷¹ Thus, Angelo suggested that mercilessness to the first offender was the highest form of mercy to the rest of society because of its presumed deterrent effect on would-be fornicators. Not only did Angelo imply that his unreasonable punishment saved the sinner's soul, but also that death acted as the ultimate equalizer. However, he mistakenly believed that it lies within his rightful authority to mete out such death sentences in the name of justice. Mercy informed justice with equity when Isabella told Angelo what he should do about sentencing Claudio. Shakespeare illustrated that the government would be diminished if its leader lacked the ability to empathize with the human condition, which is full of faults, indiscretions, and ambiguities.

Angelo conceded that the justice system might encounter a situation in which the judge's reputation has been sullied in some way, but he insisted that a judge's faults did not change the condemned man's circumstance. He made it his mission not to "make a scarecrow of the law."⁷² Angelo also differentiated himself from the violator of the anti-fornication statute, as he did not act upon his passions, though he may have felt them. He remained committed to the idea that justice existed in the law when punishment was doled out consistently and severely. Angelo, however, disqualified himself for his role as a judge when he moved from severe punishment of offenders to extortion of sex from Isabella. He planned to keep to the severity of the punishment by executing Claudio even after coercing Isabella into having sex with him. If Angelo could have recognized the difference between his public reputation for lawfulness, his

⁷⁰ *Id.* act 2, sc. 2, ll. 98–100.

⁷¹ *Id.* act 2, sc. 2, ll. 103–07.

⁷² *Id.* act 2, sc. 1, l. 1.

extortion, and lascivious intent that may have represented his first steps towards self-knowledge.

In stark contrast, Isabella pleaded for mercy, for her brother's life, and presented an opposing version of justice by suggesting the incorporation of the divine quality of mercy. In a series of entreaties, Isabella's wisdom echoed Portia's famed mercy speech in *Merchant of Venice*. Arguably not the shy novice she prided herself to be, Isabella ranged from trying to cajole Angelo to pleading with gracious commentary, reminding him that no symbol of power becomes the powerful "with one half so good a grace/ As mercy does,"⁷³ to the frankly insulting. Isabella resorted to mercy after admonishment seemed to fall on deaf ears. She postulated that "man, proud man,/ Dressed in a little brief authority,/ Most ignorant of what he's most assured,/ . . . Plays such fantastic tricks before high heaven/ As make the angels weep."⁷⁴ Angelo, however, ignored Isabella's commentary and disregarded her observation that "it is excellent/ To have a giant's strength, but it is tyrannous/ To use it like a giant."⁷⁵ She dwelled on mercy without appealing to Angelo's sense of power and when she added "prayers from preservèd souls,/ From fasting maids whose minds are dedicate/ To nothing temporal",⁷⁶ Angelo did not feel inclined to grant mercy.

Lucio, the character who initially urged Isabella to go to Angelo for her brother's pardon, insisted that she is too cold and quite explicitly advised her to "touch him, there's the vein."⁷⁷ Throughout the initial exchange, Lucio contributed to the sexual atmosphere by mirroring its sexual substance. Lucio's advice to Isabella brought together the sexual and legal tensions inherent in power struggles in general, and specifically related to the statute at issue throughout the play. Intermittently throughout Isabella's mercy speech to Angelo, Lucio urged her to do "more o'that."⁷⁸ Lucio's coaching contained a sexual element that clearly contrasted with Isabella's chastity;⁷⁹ this did not,

⁷³ *Id.* act 2, sc. 2, ll. 63–64.

⁷⁴ *Id.* act 2, sc. 2, ll. 121–26.

⁷⁵ *Id.* act 2, sc. 2, ll. 110–12.

⁷⁶ *Id.* act 2, sc. 2, ll. 157–59.

⁷⁷ *Id.* act 2, sc. 2, l. 72.

⁷⁸ *Id.* act 2, sc. 2, l. 133.

⁷⁹ See Clifford Leech, *More Than Our Brother is Our Chastity*, 12 CRITICAL Q. 73, 73–74 (1970); Henry V. Jaffa, *Chastity as a Political Principle: An Interpretation*

however, appear completely inappropriate, given the adversarial nature of both legal discussions and sexual pursuit.⁸⁰ This tension within the realm of legal analysis reflected the age-old tensions between master and student, which some scholars claim possess undertones of homoeroticism. The oppositional situation encouraged an adversarial atmosphere that can directly correlate to the typical sexual struggle between men and women personified here by Angelo and Isabella.

Yet, most significantly, Isabella's brand of justice applied uniformly in a manner that Angelo's exerted authority did not (though he attempted to apply his laws to all), because God subjects all to judgment. Isabella reminded Angelo of his own human condition, literally, as she advised him to "think on that,/ And mercy then will breathe within your lips/ Like man new made"⁸¹ and figuratively, as Angelo fell prey to his lust for her. Angelo elaborated on the aforementioned pregnancy metaphor by admitting to the "strong and swelling evil/ Of [his] conception."⁸² While Angelo believed his proffered extortion created a merciful option for Isabella's brother, the appalled supplicant retorted that, "lawful mercy/ Is nothing kin to foul redemption."⁸³ It should be noted, however, that Isabella, in her chastity, displayed a comparable level of obstinacy at Angelo with regard to his notions of the law. Isabella desired a stricter rule in the convent, which directly corresponded to Angelo's regard for strict adherence to the letter of the law. Isabella, nevertheless, came to represent mercy by the end of the play when she begged the Duke to spare Angelo's life.

That parallel of scrupulosity aside, both Angelo and Isabella recognized the illegal nature of his demand for sex as she threatened to report him to the proper authorities. Angelo, in quite the stereotypical he-said-she-said response, scoffed at her

of Shakespeare's *Measure for Measure*, in *SHAKESPEARE AS A POLITICAL THINKER* 181, 206, 208-09 (John Alvis & Thomas G. West eds., 1981) (discussing Lucio's bawdy language and how Isabella was thought of as a saint).

⁸⁰ See *MEASURE FOR MEASURE*, *supra* note 12, act 2, sc. 2, ll. 44-159.

⁸¹ *Id.* act 2, sc. 2, ll. 79-81.

⁸² *Id.* act 2, sc. 2, ll. 6-7.

⁸³ *Id.* act 2, sc. 4, ll. 113-14. Other characters in the play referred to Angelo's extortion: "Has he affections in him,/ That thus can make him bite the law by th'nose/ When he would force it?." *Id.* act 3, sc. 1, ll. 107-09. "The corrupt deputy scaled." *Id.* act 3, sc. 1, ll. 238-39.

warning, asking: "Who will believe thee, Isabel?"⁸⁴ Angelo demanded sex from Isabella in return for what he implied would be a favorable outcome in her brother's sentencing. Clearly, Angelo risked his very position cloaking himself in the belief that his station would excuse any behavior, the ultimate irony for a character so concerned with strict moral responsibility to the state for otherwise private actions.

Shakespeare's treatment of Angelo and Isabella's conflict drew attention to the important legal principle that the manner in which a law is administered is just as important as the behavior the law sought to regulate. Accordingly, their interaction provided a reflection of the sexual content of Claudio's illicit behavior both procedurally and substantively, as well as confirming Angelo as the consummate hypocrite, attempting to sin far more exceedingly than the man whom he wished to put to death. This relationship reveals the manner in which the administration of law sets family and public law into conflict, as the judge becomes the subject of his own punctilious principles, which are tossed aside at the sight of a young innocent.

Isabella was forced to make a public denunciation of Angelo in order to seek justice for her brother whom, as both Angelo and Isabella believed, Angelo has executed. In a formal setting, the Duke on his official return to power heard complaints relating to what occurred in his absence.⁸⁵ Isabella stepped forward, as the friar/Duke had earlier counseled her to do. This was a brilliant trial scene, the crux of the whole play, in which Judge Angelo was accused of extortion of a supplicant. At the opening of her complaint, just as Angelo had said, Isabella's witness alone proved insufficient to obtain redress. The scene was filled with irony. Angelo momentarily thought that he had escaped accountability because of the two-witness rule.

To turn the tables on Angelo, Mariana confirmed that Angelo was willing to extort sex in return for commuting

⁸⁴ *Id.* act 2, sc. 4, l. 155. See Wilbur Dunkel, *Law and Equity in Measure for Measure*, 13 SHAKESPEARE Q. 275, 280 (1962) (suggesting that in real life a ruler of conscience who appointed Angelo to a position of authority "could not escape from recognizing his error in judgment. His duty was summarily to dismiss Angelo and punish him.").

⁸⁵ Angelo proclaims: "if any crave redress of injustice they should exhibit their petitions in the street?" See *MEASURE FOR MEASURE*, *supra* note 12, act 4, sc. 4, l. 143.

Claudio's death sentence. The two-witness rule secured sufficient proof with Mariana's testimony and allowed the Duke to impose judgment on Angelo. Angelo's extortion and lie that in return he would not impose the death penalty on Claudio were exposed, thereby publicly accounting for Angelo's actions and explaining why Angelo would no longer serve as judge. Angelo now faces the same penalty that he was willing to impose on Claudio. Just as Isabella needed Mariana to corroborate Angelo's crime, Mariana needed Isabella's cooperation to obtain mercy for Angelo from the Duke.

Thus, to avoid imposition of the death penalty on Angelo, Mariana turned to Isabella, the same supplicant who pleaded with Angelo to have mercy on Claudio. Again a sense of irony pervaded Angelo's sentencing. This sentencing phase of the trial scene, however, was the occasion for Isabella's public commitment to mercy, which she had previously sought in private for Claudio. In answer to Mariana's call, Isabella applied her principle of mercy equally to the man she believed had her brother executed, as she pleads with the Duke not to impose the death penalty on Angelo, which Angelo had imposed on Claudio for consensual sex. Isabella's logic may have appeared fallacious in asking for mercy for Angelo when she did not yet know that her brother was alive, but she noted that her brother Claudio did commit the act for which he received the sentence of execution. Further, she noted that Judge Angelo, unlike Claudio who consummated his relationship with Julietta, intended to extort sex from her, but failed to accomplish his aim. Isabella was correct. Technically speaking, according to the law of criminal attempt, Angelo had consensual sex with Mariana, though it was unbeknownst to him. Nevertheless, there was more than a technical meaning to Isabella's stance on mercy at Angelo's sentencing. She learned forgiveness in her heart and wished to see no more death for fornication, an act that, after all, should not be punished by death. Finally, Angelo admitted shame for his crime and craves death as his scrupulosity has been transformed into repentance. He was now a man who burns with shame as much for his indecency as for threatening the life of such a publicly acclaimed gentleman as Claudio.

Perhaps Angelo craved the justice of his rightful execution rather than seeking mercy because it served his own ends since the Duke removed him from his position. He would rather die

than face the humility of his life after having fallen from the Duke's graces. It was much more difficult for Angelo to be the recipient of the Duke's mercy only because Mariana and Isabella begged the Duke to have mercy upon his former deputy. Angelo is now forced to live and come to the realization that he is a less than perfect creature. Also, he had to make some accommodation with Mariana, whom he has wronged and to whom he is now beholden.

Shakespeare's audience could separate the judge's crime of extortion from his violation of the anti-fornication statute. They may have considered whether the judge's extortive fornication triggered the statutory penalty for the extorter. It may be that the statute attempted to reach the man's sexual activity only when his partner consented. How can Angelo's case be reconciled with the prior case of Claudio and Juliet, two consenting, committed parties? What was the judge's ethical role in the community? Should Angelo suffer greater consequences in addition to the penalties for extortion because of his violation of the statute? Should the death penalty for the extortionate judge be avoided if the victim begs for the offender's life? In the end, the judge's demand for sex to fix a case cautions mercy for the average upstanding citizen (represented in the play by Claudio) who often may not be able to obey the too-severe statute. The audience, except for extreme legislators and their political supporters, realized that excessive severity no more lead to statutory compliance than great laxity did, because the requirements went beyond what Claudio and even Angelo, who prided himself on his self control, could practice.

F. Vincentio and Isabella: The Power of the Earthly Crown v. The Desire for God

The laxity of earlier times gave way to the severity embraced at the outset of the play. Despite this change, Duke Vincentio, in some ways the voice of wisdom and measured reason, retained the trust of the citizens of Vienna. He took full advantage of the people's trust in order to manipulate numerous situations in which he might have tested his suspicions about Angelo. During the course of the play, the Duke's relationship with Isabella was transformed from confessor/confessed, to accomplices in the plan to punish Angelo, to Duke/citizen, and

finally to suitor/maid. The Duke was arguably the most highly developed character in the play revealing in each role an aspect of his person. Shakespeare, however, appeared to include the variety of encounters between Isabella and the Duke to display his humanity. The audience instinctively recognized that his proposal at the end of the play after saving her brother's life did not rise to the level of Angelo's crime of extorting Isabella's sexual favors as the price of mercy in sentencing her brother. Nevertheless, the Duke's proposal remained troublesome.

Isabella and all the characters saw the Duke in two roles: as friar and as Duke. As a scrupulous supplicant and citizen, Isabella in particular, was greatly humbled by both figures. She, an enthusiastic religious novice, both trusted the friar as the earthly representative of God to whom she wished to devote her life and respected the Duke as the representative of her fellow citizens of Vienna. Thus, the Duke embodied both church and state as he concealed himself in the friar's habit through much of the play. The Duke, however, dealt with the problems in Vienna by resorting to disguise and deception, thereby underlining the dangers of governmental spying and intrusion into citizens' private lives.⁸⁶ While Angelo bullied Isabella about her lack of witnesses to her claims of wrongdoing, Vincentio hid his identity in order to spy on his subjects. The Duke used questionable means but had a better moral character than Angelo.

The Duke relied upon his confidence and wit to manipulate the rest of the characters throughout the play in various ways. Some readers interpreted the Duke's disguise as a friar as epitomizing the deceit of undercover police operations to obtain the most reliable evidence. Thus, potential for abuse of the trust readily granted to the clergy added to the gray area of moral questions. As a friar, Vincentio gained access to the jail cell and

⁸⁶ As Professor Anthony Miller of Sydney University (anthony.miller@english.usyd.edu.au) points out, the Duke's role was problematic. While the Duke spent long years in study, he did not expect to succumb to Cupid's arrow and even though he aspired to the highest ideals, his means to achieve justice were hardly ideal. The Duke spied on other people, let Isabella suffer needlessly by not telling her that her brother was alive just to see how much she believes in mercy (joining with Mariana to beg the Duke for mercy toward Angelo), and allowed Mariana to be the willing victim of Angelo's extortion and violation of the anti-fornication statute. Lucio, a man of little responsibility himself (he lies to get out of child support) served as a witty critic of the Duke. Interview via email with Anthony Miller, Professor, Sydney University (1999).

was able to overhear Isabella disclose Angelo's foul plans to her imprisoned brother Claudio. Vincentio claimed, however, that "fortune hath conveyed [Angelo's proposal] to [his] understanding"⁸⁷ as he presented himself to Isabella as a trusted member of the clergy, ready to help in her time of need. Already, the audience recognized that Vincentio was taking advantage of the situation. To further the possible moral reprehension, he also frankly admired Isabella, as he observed that "grace [is] the soul of [her] complexion, [which] shall keep the body of it ever fair."⁸⁸ Shakespeare presented Vincentio in a compromising position masquerading as a friar attracted to this grieving supplicant. Yet, unlike Angelo's attitude, the Duke's intent to ameliorate the situation seemed to override his human frailties and he offered Isabella his advice, because "to the love [he has of] doing good. . .[a] remedy presents itself,"⁸⁹ gaining her trust along with the faith of the audience.

Vincentio took full advantage of this trust as he devised a plan to suit all involved—Claudio, Mariana, Angelo, Isabella, and himself. Vincentio, the one omniscient voice in the play, consoled Mariana and Isabella simultaneously, asking for their participation in his scheme to undo the damage Angelo had done. Vincentio had thus recruited Mariana's efforts to bring Angelo to justice and he excused the deceit as he reminded Mariana that "To bring you thus together 'tis no sin,/ Sith that the justice of your title to him/ Doth flourish the deceit."⁹⁰

In his enviable position of knowledge, Vincentio also carefully weighed the information he garnered and made plans; he only revealed to the desperate Isabella the precise bit in order to further her dependence upon him. In an aside, Vincentio informed the audience that he would keep Isabella "ignorant of her good/ To make her heavenly comforts of despair/ When it is least expected."⁹¹ But Vincentio went further than merely

⁸⁷ See *MEASURE FOR MEASURE*, *supra* note 12, act 3, sc. 1, l. 180.

⁸⁸ *Id.* act 3, sc. 1, ll. 178–79.

⁸⁹ *Id.* act 3, sc. 1, ll. 191–92.

⁹⁰ *Id.* act 4, sc. 1, ll. 70–72. Isabella was in no position to hesitate and, given the choice between a scheme at the direction of a friar or what could only be classified as rape, Isabella had to follow Vincentio's orders.

⁹¹ *Id.* act 4, sc. 3, ll. 100–02. The Duke was frank about engaging in deceit and espouses the philosophy that the end justified the means. For example, in proposing the bed trick to Isabella, the Duke said, "the doubleness of the benefit defends the deceit from reproof." *Id.* act 3, sc. 1, ll. 240–41. Similarly, the Duke said

withholding information, as he misrepresented himself and the situation by telling Isabella that Claudio was dead and that their sole remedy was the hope of an audience with the understanding Duke, who would never let such a tragedy occur. Isabella proceeded through the remainder of the play under the assumption that her brother was killed by Angelo's decree because Angelo's interest was not with the welfare of the statute, but the welfare of his carnal nature.

Vincentio again resorted to manipulation by allowing Isabella to relay the entire saga without revealing himself. The Duke also brought Mariana in to support the accusations against Angelo, and pays her no heed, exiting only to return again in the friar's habit. Even after he revealed his identity and sends Mariana off to marry Angelo, Vincentio still alluded to Isabella that her brother was dead and allowed Isabella to retreat to her knees, pleading for mercy for Angelo's life believing she received none. Claudio was brought, masked, into the Duke's presence so that he may unmask the prisoner, asking Isabella, "If he be like your brother, for his sake/ Is he pardoned, and for your lovely sake/ Give me your hand, and say you will be mine,/ He is my brother too."⁹² Vincentio explicitly timed this event so that Isabella, deceived and distraught, would be taken by complete surprise at his proposal. Shakespeare included neither Isabella's response, nor her reaction, nor even a stage direction suggesting her state of mind. The Duke timed the proposal perfectly so that he appeared a hero, yet the audience is left wondering about Isabella's sincerity since she agreed to part of the deception by allowing Mariana to take her place. For the audience, Isabella's major interior commitment to become a postulant in a convent may have made it inappropriate for the Duke to offer her marriage. On the other hand, the point of being a postulant is to find out whether one indeed has a vocation. In any event, the final outcome was left unanswered as the curtain falls and the Duke reiterated the proposal.

In contrast to Angelo, the Duke did not view his own behavior as sinful, thus allowing him to move through the play with ease and achieve his sought after goals. A cynical reader of his character could be forgiven for suspecting that Vincentio's

to Mariana of the same scheme, "that the justice of your title to him/ Doth flourish the deceit." *Id.* act 4, sc. 1, ll. 71-72.

⁹² *Id.* act 5, sc. 1, ll. 483-86.

intent was to lure Isabella into marriage all along. All the while it seemed that the Duke merely used his shrewd mind and approachable character to achieve the greater good. The somewhat questionable marriage proposal suggested that the Duke, the character who stood for wisdom and reason, openly possessed faults. Shakespeare, wisely, did not portray or advocate human perfection in his characters' actions or in their administration of the law, which according to natural law would in any event be impossible.⁹³ He did, however, give the reader a model of a human being in the Duke, who soared through the play with ease and confidence because he was reasonable, and yet still fell prey to his desires by attempting to gain a wife after administering his merciful brand of justice. Shakespeare suggested, as the curtain fell, that marriage to the Duke would benefit Isabella as much as her ruler by taming Isabella's pride and overzealous scruples. This final situation represents the notion that human beings (who are after all neither completely good nor completely evil) who recognize their shortcomings, and still intended good will, encounter the greatest success in life. Furthermore, the outer trappings, be they the habit of a nun, the hood of a friar, or the robes of a Duke, were far outweighed by the cloaked character's intent. In a typical legal balancing test, if the resulting public good outweighs the harm encountered, the person's heroic efforts will be recognized as such.

Vincentio's approach to government, which acknowledged his own imperfections, was superior to Angelo's proclamation of the ideal human behavior as the standard, sanctioned by the death penalty. At the same time, the student of Shakespeare's views will be asked to recognize the imperfections in the Duke's policies and approaches to government and the law. An important authority figure proposed marriage to a novice recently the victim of extortion. Is he abusing his position to gain the advantage of a contract of his own?

Again, this authority figure, the Duke, discovered the novice's victimization in an unethical way. Would the Duke's behavior be more reprehensible if he had discovered the information in the privacy of a confessional? Should his unethical act insulate him from punishment because it delivered

⁹³ See WHITE, *supra* note 11, at 76-77 (discussing English literature's critical treatment of historical figures).

Angelo a "greater" criminal? Further, the Duke continued to keep to himself the knowledge that the novice's brother is alive. Even though he has not violated the anti-fornication statute, is Vincentio, the authority figure, still acting questionably?

CONCLUSION: THE DEMANDS OF EQUITY MET

As each couple is presented in *Measure for Measure*, a different circumstance calls the appropriateness of the anti-fornication statute into question. Providing the evidence to show the public that the statute is overly severe requires the Duke to travel incognito in his own territory. The Duke's private investigations give him the information he needs to make decisions and since that information cannot be openly acknowledged, he manipulates situations and people to bring about just results once Angelo has engaged in selective enforcement of the statute requiring the death penalty for fornication. Technically, Isabella's accusation at the end of the play was insufficient in the absence of Angelo's unlikely confession (guilty plea). The bed trick provides Mariana as the second witness the Duke needs to credit Isabella's complaint against Angelo. Isabella's witness against Angelo also triggers public accountability for Angelo's actions as a judge and supplies the way for the Duke to dismiss Angelo from his position.⁹⁴

Although Isabella has denounced Angelo publicly, she calls upon the Duke to have mercy on him, thereby teaching us that mercy or equity does not mean pretending the wrongdoing never happened, but in fact asks us to confront the wrongdoing and deal with it—not in the easy "off with his head" way, but in a thoughtful manner which demands Angelo and all of us to become better persons, leading better lives. The shame of it all for Angelo is that it makes him ask for the easy way out. Angelo with his "macho" bravado finds strict justice, the death penalty, easier to take than mercy.

⁹⁴ Jails were difficult to maintain for large numbers of prisoners and taking the law seriously did not necessarily imply jail time as punishment. See Peter Spierenburg, *The Body and the State*, in *THE OXFORD HISTORY OF THE PRISON: THE PRACTICE OF PUNISHMENT IN WESTERN SOCIETY* 61–62 (Norval Morris & David J. Rothman eds., 1995) (explaining that judges would deal with criminals in the least expensive manner possible).

A modern reader may interpret the course of the play as a progressive series of events to increase Angelo's self-awareness and recognition of his own fallibility as well as that of the law. Angelo is punished through Isabella's public accusation, which allows the people to see why the Duke will not permit Angelo to serve as his deputy in the future. Natural law is thereby satisfied since it seeks to have the law set right again and does not necessarily depend on punishment as we know it.⁹⁵ Angelo makes restitution to the mistreated Mariana by carrying out his precontract to marry her. Angelo has also had to confront himself for the first time and with Mariana's help will learn to make something of his life. In this way, the mercy Angelo receives does not ignore the fact of his wrongdoing (as the old government in Vienna had frequently done before the play began), but requires Angelo to deal with his behavior.

Our society, too, has at times criminalized some consenting sex between two adults (interracial marriage, gay sex) and has fluctuated between acceptance of and harshness toward premarital sex and pregnancy. With his powerfully drawn characters, Shakespeare has rejected the criminalization of fornication and returned the problem of premarital sex to the realm of family and marriage law. In rejecting the death penalty for fornication, Shakespeare does not let the characters escape responsibility for their actions. Instead he requires the offenders to marry, even if they see marriage as a punishment. Where is the consent criterion in a forced marriage? All the forced marriages (Lucio, Claudio and Angelo) had been preceded by consensual sex between the two who are now required to marry.

Rather than execute these men, the Duke leaves them to work out their own fate, yoked to women whom they had avoided marrying. Each man is allowed to live and through marriage must take responsibility for his sexual decisions. While Claudio may have the best prospect of a happy marriage since he claimed Juliet as his wife even on the way to prison, the trauma and ordeal of public exposure of their relationship to public scrutiny and Claudio's narrow escape from imposition of the death

⁹⁵ Accountability in the federal system today might be satisfied by indicting him for extortion under the Hobbs Act, 18 U.S.C. § 1951(b)(92) (2000), which defines extortion as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."

penalty may signal a rocky period of adjustment. Lucio went to great lengths to avoid supporting his child, including, as he admitted to the friar, lying about the child's paternity when Kate sought child support. He even more adamantly resisted marriage to Kate, but here the lenient Duke would brook no opposition. Lucio will have a difficult time reconciling himself to marriage with a woman he has publicly denounced as a prostitute, even if that was only a ploy to avoid supporting his child. It is harder to predict a good marriage for Angelo, who coolly rejected his fiancée when her dowry was lost at sea. Although Angelo in fact consummated his relationship with Mariana, he had little interest in her. Shakespeare portrays him as an otherwise good man who behaves hypocritically about sex. In reality, a person hardly ever has only one fault and Angelo has been deposed as judge. He brings many emotional disabilities to his marriage, but has at least started his marriage after admitting his wrongdoing.

On the other hand, Shakespeare's contemporaries were much more used to arranged marriages and in these cases the Duke had simply arranged the three offenders' marriages to women with whom they had engaged in sex. Between Isabella and the Duke, there had been no sex and we do not know the outcome of the Duke's proposal. Marriage to the Duke could moderate Isabella's previous propensity to an extreme monkish asceticism and consequent pride. She has now learned mercy and if she accepts the Duke's proposal she will be returned to order under a patriarchal authority via a marriage to the ultimate patriarch and mate, the prince himself. Isabella's failure to reply to the Duke's proposal of marriage leaves an "abiding question mark against the nature and success of the Duke's establishment of order."⁹⁶ This is a fitting way to end a play involving a series of couples caught in the web of an anti-fornication statute with too broad a sweep and far too harsh a penalty.

We may each draw our own conclusions about the fate of Isabella and Vincentio, knowing that Shakespeare and his society prized marriage over individual sanctification through monastic life. Isabella has found it in her heart to forgive Angelo and lives her life according to the dictates of mercy, even asking

⁹⁶ Lake, *supra* note 12.

the Duke to pardon Angelo before she knows her brother still lives, while the Duke learns how to mete out justice. Even more than returning sex to the realm of marriage rather than crime, Shakespeare has explored the proper balance between justice and mercy in the legal system. The Duke no longer leaves it to the parties to sort out sexual relationships. He requires marriage, which becomes fashionable once again in Vienna, thereby obviating the perceived need for such drastic measures as the death penalty for fornication.

Shakespeare's solution to private relationships, marriage rather than either rampant fornication without consequences, on the one hand, or the death penalty for any deviation, on the other hand, is mirrored in his prescription for good government and law enforcement. There too he espoused (no pun intended) the *via media* (moderate) between laxity leading to disrespect for the law and harshness leading to fear and executions because the average man was unable to comply with the law. At the end of the play the audience has been presented with a series of characters and circumstances that calls into question the validity of the anti-fornication statute. They appreciate the moderation Shakespeare enjoined as a positive contribution to a healthy society.

In *Measure for Measure*, Shakespeare provides successive generations with a rich source for reflection from which to examine the same types of private issues and socio-legal problems in their very different societies.⁹⁷ Shakespeare has used Vienna's criminalization of consensual private relationships to warn us of the dangers of over-zealous government because only in this very public and simultaneously private arena, may we realize so dramatically the consequences of hypocritical and overly strict public regulation, and a justice system lacking in mercy and equity. Mercy has been shown to improve the strict harshness of the law and put the law at the service of the people for whose benefit the laws have been promulgated.

⁹⁷ Cesare Beccaria (1738-1794) discussed severity of punishment and deterrence in an Enlightenment context. CESARE BECCARIA, *ON CRIMES AND PUNISHMENTS* 46-47 (Henry Paolucci trans., Bobbs-Merrill Educational Publishing 1963) (discussing motives and reasons behind the use of the death penalty); *see also* MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* 75-77 (Alan Sheridan trans., Pantheon Books 1975) (giving homage to 18th Century philosophers for improving the treatment of convicts).

